IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 140 of 1982

For Approval and Signature:

Hon'ble MR.JUSTICE KSHITIJ R.VYAS
and
Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgement? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

STATE BANK OF INDIA

Versus

ASHWIN BROTHERS CORPORATION

Appearance:

1. First Appeal No. 140 of 1982
MR AC GANDHI for appellant
MR KG VAKHARIA for Respondent No. 1-4

CORAM : MR.JUSTICE KSHITIJ R.VYAS
and
MR.JUSTICE H.K.RATHOD

Date of decision: 08/10/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE KSHITIJ R.VYAS)

The appellant State Bank of India (original plaintiff) has filed this appeal under Section 96 of the Code of Civil Procedure, challenging the judgment and order dated 12th August 1981 passed by the learned Civil Judge (Senior Division), Nadiad. By the impugned judgment, the learned Judge ordered that the plaintiff's suit is abated.

The plaintiff filed the suit to recover Rs.5,37,572.56 ps. with interest at the rate of 14% per annum against the respondents defendants. It is the case of the plaintiff that the plaintiff is a Corporation constituted under the State Bank of India Act, XXIII of 1955 and carrying on the business at its branch office at Mahmedabad. Defendant No.1 is a partnership firm carrying on manufacturing business of Metallic Yarn and Polyester Film etc. at Udyognagar, Mehemedabad. Defendant No.2 was previously sole proprietor of Defendant No.1 Firm. However, he and defendants Nos.3 and 4 were partners of defendant No.1 firm, at the time of filing of the suit. Defendants approached the plaintiff Bank for credit facilities to the tune of Rs.4 lacs to use the same as working capital and the said credit facilities were given to the defendants as per the terms and conditions agreed between the plaintiff Bank and the defendants. The said credit facilities were against the guarantee and hypothecation of raw materials and finished goods. Defendant No.1 Firm had to submit at monthly intervals the statements detailing stocks hypothecated to the plaintiff Bank. There was a clear understanding that the outstanding borrowings should at all times be fully covered by the market value of the hypothecated stocks less stipulated margins. That if at any time the drawing power yielded by the stocks held by the Firm is decreased than the amount borrowed by defendant No.1 Firm, it should regularise the account to equalise the borrowings and drawing power. Defendant No.1 was not authorised to change the management set up without the prior permission of the plaintiff Bank. It is the case of the plaintiff that the defendants have committed serious breach of the conditions of the said credit facilities. Defendants Nos.2, 3 and 4 have executed the agreement as guaranteers as personal sureties for the said credit of Rs. 4 lacs. It is further the case of the plaintiff that the defendants have not maintained the balance of margin between stock and drawing power, and not regularized the accounts. The defendants have changed their management set up and have

stopped their business turnover and are arranging to transfer their properties, valuable stocks etc. to defeat the plaintiff Bank. Hence, the plaintiff filed the suit to recover the sum of Rs.5,37,572.56 ps. the details whereof are as under:

Rs.4,97,957.30	Outstanding amount as on 22.4.1977
Rs. 39,615.26	Interest up to 22.4.77 at the rate of 14%
Rs.5,37,572.56	Total claim.

The plaintiff, therefore, filed the suit to recover the said amount with interest at the rate of 14% per annum and costs of the suit from the defendants jointly and severally.

The defendants resisted the suit vide their written statement at Exh.20 by inter alia contending that the plaintiff's suit is not true and not admitted. It is admitted that defendant No.1 Firm is a partnership Firm and that defendant No.2 was the sole proprietor. However, it is not admitted that defendant No.2 is partner of defendant No.1 Firm. It is also not admitted that the credit facilities of Rs.4 lacs were given to them as per the terms and conditions and the facilities which were given against hypothecation and guarantee. It is also disputed that there was a clear understanding that the outstanding borrowings should at all times be fully covered by the market and it is also denied that if at any time drawing power yielded by stocks held by the Firm is decreased than the amount borrowed by defendant No.1 Firm it should regularise to equalise the borrowings and the drawing power. It is also disputed that defendant No.1 Firm was not authorised to change the management set up without prior permission of the plaintiff Bank; that the defendants committed any breach; that defendants Nos.2, 3 and 4 executed agreement of surety; that defendant No.1 Firm is not making turnover of stocks and not doing business and that the defendants have changed their business and are arranging to transfer their properties. In substance, the defendants disputed the entire suit of the plaintiff.

2. On the basis of the pleadings, the Issues were framed at Exh.33. It appears that Issue No.4 was ordered to be decided as a preliminary Issue in view of the application at Exh.42. The said Issue No.4 is with respect to the jurisdiction of the Court to hear the

suit.

After hearing learned Advocates appearing for the parties, the learned trial Judge, by his impugned order, held that in view of the provisions of the Gujarat Public Moneys (Recovery of Dues) Act, 1979, (hereinafter referred to as 'the Act' for short) the Court has no jurisdiction to hear the suit and, therefore, the suit abates. Hence, the present appeal.

3. Learned Counsel Mr.Gandhi appearing for the appellant Bank, after taking us through the relevant provisions of the Act, submitted that the learned trial Judge has mis-interpreted the provisions of Sections 2, 3 and 7 of the said Act and has erroneously recorded a finding that the suit abated. He also submitted that the loan facilities in question which were given to the defendants were not by way of State Sponsored Scheme and therefore, the provisions of Section 3 of the Act are not applicable to the suit transactions.

Learned Counsel Mr.Vakharia appearing for the respondents, supported the order of the trial Court in toto.

4. From the statement of objects of the Act, it is clear that the Act was enacted to provide for speedy recovery of certain class of dues payable to the State Government, State Financial Corporation, and other Corporations owned or controlled by the State Government, Government Companies and nationalised or other banks. There is no dispute to the fact that the appellant Bank is constituted under State Bank of India Act XXIII of 1955. Section 2(l) of the Act defines "State sponsored scheme", means a scheme sponsored or adopted by the State Government or an officer authorised by it in this behalf for development of agriculture or industry and notified as such by the State Government or the authorised Officer, by a notification in the Official Gazette for the purpose of this Act. Section 3 of the Act deals with the recovery of certain dues as arrears of land revenue. Section 3 of the Act is reproduced as under:

"3. Recovery of certain dues as arrears of land revenue.--(1) Where any person is a party--

(a) to any agreement relating to a loan, advance or grant given to him or relating to credit in respect of, or relating to hire-purchase of, goods sold to him by the State Government, the

Corporation or, as the case may be, the Government Company by way of financial assistance, or

(b) to any agreement relating to a loan, advance or grant given to him or relating to credit in respect of, or relating to hire-purchase of goods sold to him by a bank or a Government Company, as the case may be, under a State sponsored scheme; or

(c) to any agreement relating to a guarantee given by the State Government or the Corporation in respect of a loan raised by an industrial concern, or

(d) to any agreement providing that any money payable thereunder to the State Government or the Corporation shall be recoverable as arrears of land revenue;

and such person--

(i) makes any default in payment of the loan or advance of any instalment thereof, or

(ii) having become liable under the conditions of the grant to refund the grant or any portion thereof, makes any default in the refund or such grant or portion or any instalment thereof, or

(iii) otherwise fails to comply with the terms of the agreement --

then, in the case of the State Government, such officer as may be authorised in that behalf by the State Government by notification in the Official Gazette, in the case of a Corporation or a Government Company, the Managing Director thereof or where there is no Managing Director, the Chairman thereof, by whatever name called, and in the case of a bank, the local agent thereof, by whatever name called, may send to the Collector a certificate as early as possible in the prescribed form mentioning the sum due from such person and requesting that such sum may be recovered as if it were an arrears of land revenue.

(2) The Collector on receiving the certificate shall after making such inquiries (including

giving hearing to the party affected) as he deems fit proceed to recover the amount stated therein as aforesaid as arrears of land revenue.

(3) On recovery of any amount under sub-section (2), the same shall be paid over to the State Government, Corporation, Government Company, or as the case may be, bank after deducting, except in the case of amount to be paid to the State Government, such portion of the amount realised, as cost of collection, as the Collector may deem to be reasonable.

(4) No suit for the recovery of any such due as aforesaid shall lie in a civil court against any person referred to in sub-section (1), and no injunction shall be granted by a civil court in respect of any action taken or intended to be taken in pursuance of the right conferred by this section."

Section 7 deals with transitory provision. Sub-section (1) of Section 7 provides that all suits of the nature referred to in sub-section (4) of Section 3 pending in any Civil Court immediately before the commencement of this Act shall abate upon such commencement so however that such abatement shall be without prejudice to the right of the State Government, Corporation, Government Company or bank, as the case may be, recover any sum which may be the subject matter of such suit in accordance with the provisions of this Act, or any other law for the time being in force.

Reading the aforesaid provision, it is clear that all the agreements with the parties relating to a loan, advance or or grant given to them or credited in respect of or relating to hire-purchase of goods sold to them by a Bank or Government Company under a State Sponsored Scheme only are covered by clause (b) of sub-section (1) of Section 3 of the Act. A conjoint reading of the aforesaid provisions will make the position further clear to the effect that if the dues of the Banks for which the Banks have filed suits are not the dues under the agreement of the type contemplated by sub-section 1(b) under the State Sponsored Scheme, the jurisdiction of the Civil Court would not be ousted. Thus, suits cannot be said to have abated under Section 7 of the Act and the Civil Court will have jurisdiction to hear and decide the same in accordance with law. In other words, the Civil Court will have jurisdiction to decide the suits of the Banks to recover their commercial dues. To be more

precise, the Civil Courts will have no jurisdiction to decide the suits under the State Sponsored Scheme as defined under Section 2(l) of the Act.

As far as the facts of the present case from the pleadings are concerned, it prima facie appears that the appellant Bank has filed the suit to recover its dues on the basis of a commercial transaction with the respondents. Nothing is mentioned about the State Sponsored Scheme under which the loans were advanced to the respondents. The respondents in their written statement has simply disputed the averments made in the plaint. In other words, the respondents have also not come out with a specific case that the advances were given to them under a State Sponsored Scheme. Not only that even nothing is stated about the State Sponsored Scheme in the purshis at Exh.42 given by the respondents. In the written statement also, there is no dispute regarding the jurisdiction {presumably on the ground that the Act came into force in the year 1979 and the purshis at Exh.42 was given subsequently}. Thus, in absence of any averment regarding the State Sponsored Scheme under which the loan was advanced to the respondents and in view of the fact that the transaction between the parties being of a commercial nature, we are clearly of the opinion that the trial Court has committed an error in holding that the suit is abated in view of the provisions of the Act.

5. Learned Counsel Mr.Vakharia appearing for the respondents invited our attention to the cross examination of Mr.Chandrakant Chikhle, who was the then Branch Manager of SBI, Mahmedabad Branch, examined on behalf of the plaintiff at Exh.44. In the cross examination, this witness has stated that the loans are being disbursed as per the rules and regulations of the Government and as per the prevalent scheme of the Government. The so-called admission on behalf of the plaintiff, in our opinion, will not change the nature of transaction and/or the documents produced in the case. One has to read the so-called admission in line with the case of the parties and the documents in the case. On perusing the records and proceedings, we do not find any document of State Sponsored Scheme floated by the Government under which the loan was given to the respondents, nor any notification in that behalf is issued. Thus, in absence of any material produced in the case, it is difficult to hold that the Court has no jurisdiction to decide the suit.

6. In the result, we allow this appeal by setting

aside the judgment and order dated 12th August 1981 passed by the learned Civil Judge (Senior Division), Nadiad in Special Civil Suit No. 164 of 1977 and remand the matter back to the said Court with a direction to re-hear and decide the question of jurisdiction afresh, after allowing the parties to lead evidence, if they are keen to lead. The appeal stands allowed in terms above. There shall be no order as to costs.

7. Before parting, we would like to say that it is a very sorry state of affairs that nobody has taken proper care for early disposal of this appeal. The appeal has remained pending for more than 20 years before this Court. Even after lapse of such a long period, we have no option, but to remand the case back to the trial Court with a hope that the Bank can realise its legitimate dues from the respondents. Had the Officers of the Bank would have shown little interest in the matter, they could have made some efforts to realise its dues under the provisions of the Act instead of insisting for a legal verdict in the case. Even for that also, they could have insisted for early disposal of the appeal. In any case, they could not have waited for all these years. However, in view of the fact that the suit is of the year 1977, we direct the learned trial Judge to hear and decide the Issue regarding jurisdiction afresh within a month from the date of receipt of writ of this Court. In the event of deciding the said Issue in the affirmative, the learned trial Judge shall dispose of the suit within three months from passing of the said order.

(Kshitij R. Vyas, J.)

(H.K. Rathod, J.)

Sreeram.